IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

C O M M O N - O R D E R

(1) S.B. CIVIL WRIT PETITION NO. 8385/2004
DILIP SINGH SOLANKI Vs. THE STATE OF RAJASTHAN & ORS.

(2) S.B. CIVIL WRIT PETITION NO. 8551/2004
ROSHAN PARIHAR Vs. THE STATE OF RAJASTHAN & ORS.

(3) S.B. CIVIL WRIT PETITION NO. 8550/2004
DHARMENDRA PHOPHALIYA Vs. THE STATE OF RAJASTHAN & ORS.

(4) S.B. CIVIL WRIT PETITION NO. 8549/2004
RAJESH KUMAR GUPTA Vs. THE STATE OF RAJASTHAN & ORS.

(5) S.B. CIVIL WRIT PETITION NO. 8546/2004
ISHWAR GOVINDANI Vs. THE STATE OF RAJASTHAN & ORS.

(6) S.B. CIVIL WRIT PETITION NO. 8416/2004
RAKESH KUMAR VIJAY Vs. THE STATE OF RAJASTHAN & ORS.

(7) S.B. CIVIL WRIT PETITION NO. 8411/2004
SANDEEP BINDAL Vs. THE STATE OF RAJASTHAN & ORS.

(8) S.B. CIVIL WRIT PETITION NO. 8420/2004
SUNIL KUMAR AGARWAL Vs. THE STATE OF RAJASTHAN & ORS.

(9) S.B. CIVIL WRIT PETITION NO. 8418/2004
MANOJ KUMAR GOYAL Vs. THE STATE OF RAJASTHAN & ORS.

(10) S.B. CIVIL WRIT PETITION NO. 8419/2004
MAN SINGH SOLANKI Vs. THE STATE OF RAJASTHAN & ORS.

(11) S.B. CIVIL WRIT PETITION NO. 8412/2004
PRADEEP KUMAR AGARWAL Vs. THE STATE OF RAJASTHAN & ORS.

(12) S.B. CIVIL WRIT PETITION NO. 8414/2004
SHARVAN KUMAR AGARWAL Vs. THE STATE OF RAJASTHAN & ORS.

(13) S.B. CIVIL WRIT PETITION NO. 8417/2004
AZAD GEMAWAT Vs. THE STATE OF RAJASTHAN & ORS.

(14) S.B. CIVIL WRIT PETITION NO. 8556/2004
KANHAIYA LAL GARG Vs. THE STATE OF RAJASTHAN & ORS.

(15) S.B. CIVIL WRIT PETITION NO. 8552/2004
DINESH KUMAR SHARMA Vs. THE STATE OF RAJASTHAN & ORS.

(16) S.B. CIVIL WRIT PETITION NO. 8555/2004
PAWAN KUMAR JAIN Vs. THE STATE OF RAJASTHAN & ORS.

(17) S.B. CIVIL WRIT PETITION NO. 8553/2004
SACHIN BAFNA Vs. THE STATE OF RAJASTHAN & ORS.

(18) S.B. CIVIL WRIT PETITION NO. 8415/2004
SANJAY KUMAR SHAH Vs. THE STATE OF RAJASTHAN & ORS.
AND
(19) S.B. CIVIL WRIT PETITION NO. 8413/2004
ANIL KUMAR AGARWAL Vs. THE STATE OF RAJASTHAN & ORS.

Date: December 13th , 2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. Bajrang Lal Sharma, Sr. Advocate with
Mr. C.S. Sharma for the petitioners.
Mr. B.S. Chhaba, Dy. GA for the State.
Mr. R.K. Mathur for the respondent Nos. 2 and 3.

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REPORTABLE

Since all the 19 writ petition are involving similar question of law and facts, therefore, they are being decided by this common order.

2. The facts of the case of *Dilip Singh Solanki* are taken as leading case. The petitioner submitted his application to the Registrar, Registration Tribunal, Nagaland for his registration as Pharmacist in view of the provisions of Section 31(d) of the Pharmacy Act, 1948. The Registrar, Registration Tribunal, Nagaland made necessary inquiry on behalf of the Tribunal with respect to experience of the petitioner and after

making necessary inquiry as required under Section 30 (3) of the Act, the Tribunal being satisfied that the petitioner is eligible/qualified for being registered as Pharmacist, directed the Registrar to issue certificate under Section 33 of the Act for registration of the petitioner as a Pharmacist on 07.11.99 and his name was entered at No. 2040 in the register of pharmacist.

3. In the month of January, 2000, when the petitioner, as he belongs to Rajasthan, returned back to Rajasthan, he submitted an application on 22.05.2000 to the respondent No.3, the Registrar, Rajasthan Pharmacy Council, Jaipur for transfer of his registration as Pharmacist from Nagaland to State of Rajasthan.

4. Upon receiving the application of the petitioner by the respondents, they sought verification of Registration and no objection from the Registrar, Pharmacist Registration Tribunal, Nagaland for transfer of registration of the petitioner. The Nagaland Registration Tribunal sent its no objection for transfer of registration of the petitioner from Nagaland to Rajasthan State Pharmacy Council and also verified/counter signed the experience certificate of the petitioner.

5. After making necessary inquiry as required under Section 32(2) of the Act and after getting verified the experience gained by the petitioner at Nagaland and his stay while he gained the experience at Nagaland from the Nagaland Registration Tribunal, the respondent No. 2 and 3, the Rajasthan Pharmacy Council and the Registrar, Rajasthan Pharmacy Council respectively transferred the registration of the petitioner as Pharmacist from Nagaland to State of Rajasthan and his name was registered at S.No. 15855 in the register of pharmacist of Rajasthan Pharmacy Council on 13.09.2001.

6. The controversy arose when notices came to be issued by the respondent Registrar, Rajasthan Pharmacy Council, purporting to act under Section 36 of the Act on the basis of the alleged directions dated 07.03.2003 of the State Government based on the alleged enquiry report of the enquiry committee constituted by the State of Rajasthan, by which the petitioner was called upon for personal hearing on 01.11.2004.

7. All the writ petitions are preferred by the respective petitioners against the order of the Deputy Secretary, Medical and Health (Group-I) Department, Govt. of Rajasthan, Jaipur, by which on the basis of the enquiry conducted, wherein several irregularities

have been found in registering the persons as pharmacists, therefore, as per the provisions of Section 36 of the Rajasthan Pharmacy Act, the Rajasthan Pharmacy Council was directed to initiate action against such persons and struck off their names from the register.

8. The present writ petition is directed against the order dated 07.03.2003 passed by the Deputy Secretary, Medical and Health (Group-1) Department, Govt. of Rajasthan, Jaipur and the notice dated 18.10.2004 issued by the Registrar, Rajasthan Pharmacy Council pursuant to the order dated 07.03.2003.

9. Learned counsel Mr. Mathur, appearing on behalf of respondent Nos. 2 and 3 has raised a preliminary objection with regard to maintainability of all the writ petitions as these writ petitions have been filed against the show cause notice and submits that alternative remedy is available to the petitioners against the show cause notice.

10. In support of his submissions, Mr. Mathur referred the judgment rendered by the Hon'ble Supreme Court in the case of **Tin Plate Co. of India Vs. State of Bihar and others, AIR 1999 SC 74,** wherein the Hon'ble Supreme Court has held that Writ Petition-Dismissal on ground of alternative remedy- Court should

refrain from expressing any opinion on merits of the case.

11. It is also stated that the present writ petitions are premature as these are directed against the show cause notice and admittedly, reply to the show cause notice has also been submitted on behalf of the petitioners and the Rajasthan Pharmacy Council has to consider the reply submitted by the petitioners and then decide the case of each petitioner individually on its merit.

12. Learned counsel for the petitioner, in reply to the preliminary objection raised on behalf of the respondents, has submitted that the judgment referred by the respondents is distinguishable and waiting decision of Pharmacy Council is nothing but simply a futile exercise as the Deputy Secretary, Medical and Health (Group-1) Department, Government of Rajasthan vide Annexure-12 dated 07.03.2003, has decided to initiate action against the petitioners to struck off their names from the register as Pharmacists, therefore, the petitioners left with no other alternative except to challenge the show cause notice before this Court by way of these writ petitions.

13. It is no doubt that as per sub-Section (4)of Section 36 (**Removal from register)** of the Pharmacy Act,

1948, a person aggrieved by an order under sub-section (1) which has been confirmed by the State Council may, within thirty days from the communication to him of such confirmation, appeal to the State Government, meaning thereby admittedly the petitioners have got alternative remedy even on eventuality of passing any adverse order against the petitioners by Pharmacy Council.

14. This Court has taken a similar view in S.B. Civil Writ Petition No. 4307/2005- Lalit Kumar Jain Vs. The Pharmacy Council of the State of Rajasthan, Jaipur vide judgment dated 07.04.2006 and the same has been upheld by the Division Bench of this Court vide judgment dated 08.08.2006 rendered in D.B. Civil Special Appeal (Writ) No. 507/2006- Rajendra Prasad Bagaria Vs. The Pharmacy Council of the State of Rajasthan & Anr.

15. This Court has also considered the submissions made on behalf of the petitioners regarding maintainability of the writ petition against the show cause notice and the learned counsel for the petitioner has referred the judgments rendered by this Court in the case of **Dr. Hemendra Surana Vs. The State of Rajasthan And Another, 1992(3) WLC(Raj.) 591** and the Division Bench of this Court in the case of **Sukhraj**

Singh (Bajwa) Vs. The High Court of Judicature for Rajasthan & Ors., 1988(I) RLR 613.

16. The Division Bench of this Court in the case of **Sukhraj Singh Bajwa (supra),** has held that the High Court can pass suitable orders under Article 226 where charges are found groundless or void ab initio or baseless or when there is no iota of evidence to frame them or when there is non-application of mind by disciplinary authority to admitted facts.

17. Further in the case of **Dr. Hemendra Surana (supra),** the Single Bench of this Court has held that premature writ- Power of court to give relief in- Notice by authority without jurisdiction and likely to be taken thereunder null and void- Proceedings can be quashed even at stage of show cause notice.

18. Having gone through the judgments referred by the learned counsel for the petitioner, it is no doubt that this Court has ample power under Article 226 of the Constitution of India but this Court has to examine the aspect whether the show cause notices issued by the respondents are without jurisdiction or warrants any interference or not in view of the ratio decided by the Division Bench of this Court in the case of **Sukhraj Singh Bajwa (supra).**

19. Upon careful perusal of the show cause notice, it cannot said to be without jurisdiction as on the basis of the findings given by the committee constituted and as several irregularities are observed, it was thought proper to give show cause notice to the petitioners as to why their names be not strucked off from the register.

20. In the facts and circumstances of the case, the ratio decided by the Division Bench of this Court in the case of **Sukhraj Singh Bajwa (supra)** and the Single Bench of this Court in the case of **Dr. Hemendra Surana (supra)** is not applicable to the instant case.

21. Several arguments are advanced on behalf of the respective parties, but I am fully convinced with the submissions made on behalf of the respondents that as the petitioners have filed these writ petitions against the show cause notice, therefore, being premature these writ petitions deserve to be dismissed. Further the petitioners have got alternative remedy and if any adverse order is passed against them, they can file appeal before the State Government as per the provisions of Section 36(4) of the Pharmacy Act, 1948.

22. It is also not disputed that the petitioners have filed reply to the show cause notice and simultaneously preferred this writ petitions before

this Court and since this Court has passed order to maintain status quo, the respondents could not proceed further.

23. Therefore, the ex parte interim order dated 06.12.2004 passed in S.B. Civil Writ Petition No. 8385/2004 and dated 10.01.2005 passed in S.B. Civil Writ Petition Nos. 8551/2004, 8550/2004, 8549/2004, 8546/2004, 8556/2004, 8552/2004, 8555/2004 and 8553/2004 stand rejected. The stay applications also stand dismissed.

24. The respondents are directed to consider the reply submitted by the petitioners and shall pass speaking order after giving opportunity of being heard to the petitioners strictly in accordance with the provisions of law and if any adverse order is passed against the petitioners, the petitioners are at liberty to file appeal under Section 36(4) of the Pharmacy Act, 1948 before the State Government, but in any case, the present writ petitions are not maintainable and being premature deserve to be dismissed.

25. Consequently, all the writ petitions are hereby dismissed being premature with no order as to costs.

(K.S. RATHORE),J.

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